

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF CHIEF ADMINISTRATIVE HEARING OFFICER

November 17, 1999

IN RE CHARGE OF )  
MARIA ELENA CARHUAYO )  
 )  
UNITED STATES OF AMERICA )  
Complainant )  
 )  
vs. )  
 )  
FAIRFIELD JERSEY, INC., )  
FAIRFIELD TEXTILES )  
CORPORATION )  
Respondent. )  
\_\_\_\_\_ )

8 U.S.C. § 1324b Proceeding  
OCAHO Case No. 99B00037

ORDER GRANTING COMPLAINANT'S MOTION FOR A PROTECTIVE ORDER

On September 7, 1999, respondent requested a subpoena to compel the testimony of Mr. Mejia, the charging party's estranged husband. Respondent previously attempted to issue a subpoena without the signature of the presiding Administrative Law Judge. The Office of Special Counsel (OSC), in response to respondent's initial subpoena attempt, moved for a protective order. In light of respondent's renewed subpoena request, it is appropriate to again evaluate complainant's motion.

The pertinent procedural rule, 28 C.F.R. § 68.18(c), allows an Administrative Law Judge to "make any order that justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense." A protective order may issue for good cause and may prohibit or limit discovery. 28 C.F.R. § 68.18(c).

OSC has standing to seek a protective order in this case since the pertinent rule provides that, "[a] party shall have standing to challenge a subpoena issued to a non-party if the party can claim a personal right or privilege in the discovery sought." 28 C.F.R. § 68.25(d).

OSC is a "party" to this action, as the term is defined in the procedural rules and OCAHO case law. See 28C.F.R. § 68.2(3); In Re Investigation of Valley Crest Tree Company, 3 OCAHO 579, 1779 (1993).<sup>1</sup> Accordingly, OSC has demonstrated that it has a personal right or privilege in

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<sup>1</sup>Citations to the Office of the Chief Administrative Hearing Officer (OCAHO) precedents, reprinted in bound volumes 1-7, Administrative Decisions Under Employer Sanctions and Unfair

the discovery sought. Since OSC is obliged to enforce the anti-discrimination provisions of Immigration Reform and Control Act (IRCA). OSC's role is analogous to that of other government attorneys who act on behalf of an individual, though not technically acting as the individual's attorney. See generally General Telephone Company of the Northwest, Inc. v. Equal Employment Opportunity Commission, 446 U.S. 318 (1980) (discussing the role of the Equal Employment Opportunity Commission attorneys who act on behalf of an individual while also representing the public's interest).

Therefore, OSC has standing to seek this protective order and has shown good cause for its issuance. Irrelevant matter that will not reasonably lead to the revelation of relevant information is outside the proper scope of discovery.

Accordingly, OSC's Motion for a Protective Order is hereby granted and respondent may not depose Mr. Mejia.

Joseph E. McGuire  
Administrative Law Judge

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Immigration-Related Practices Laws of the United States, reflect consecutive pagination within those bound volumes; pinpoint citations to Volumes 1-7 are to the specific pages, seriatim, of the specific entire volume. Pinpoint citations to other OCAHO precedents subsequent to Volume 7, however, are to pages within the original issuances.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 1999, I have served copies of the foregoing Order Granting Complainant's Motion for a Protective Order on the following persons at the addressees shown, in the manner indicated:

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